United States District Court
Southern District of Texas
Victoria Division

STATE OF TEXAS,
Plaintiff,
v.
ROCHELLE WALENSKY, in her official capacity as Director of the Centers for Disease Control & Prevention;
CENTERS FOR DISEASE CONTROL & PREVENTION;
XAVIER BECERRA, in his official capacity as Secretary of Health and Human Services;
U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES;
ALEJANDRO MAYORKAS, in his official capacity as Secretary of Homeland Security;
U.S. DEPARTMENT OF HOMELAND SECURITY;
CHRISTOPHER MAGNUS, in his official capacity as Commissioner of U.S. Customs & Border Protection;
U.S. CUSTOMS & BORDER PROTECTION;
TAE JOHNSON, in his official capacity as Acting Director of U.S. Immigration & Customs Enforcement; and
U.S. IMMIGRATION & CUSTOMS ENFORCEMENT;
Defendants.

Case 6:22-cv-13

Complaint

1. The Biden Administration's disastrous open border policies and its confusing and haphazard COVID-19 response have combined to create a humanitarian and public safety crisis on our southern border. The Defendants now seek to eliminate their Title 42 border-control measures, which are the only rules holding back a devastating flood of illegal immigration. But they

failed to follow the Administrative Procedure Act in attempting this destructive rescission of Title 42. Without justification or concern for Texans, the Defendants unlawfully disregarded the APA's notice-and-comment requirements, refused to consider numerous factors of crucial importance to their rulemaking, and laid bare the incoherence of their decision-making. The State of Texas respectfully requests preliminary and permanent injunctive relief to block Defendants' termination of Title 42.

Parties

A. Plaintiff.

2. Plaintiff State of Texas is a sovereign State of the United States of America. It spends significant amounts of money providing services to illegal aliens. Those services include education services and healthcare, as well as many other social services broadly available in Texas. Federal law requires Texas to include illegal aliens in some of these programs. As the number of illegal aliens in Texas increases, the number of illegal aliens receiving such services likewise increases.

3. The Emergency Medicaid program provides health coverage for low-income children, families, seniors, and the disabled. Federal law requires Texas to include illegal aliens in its Emergency Medicaid program. The program costs Texas tens of millions of dollars annually.

4. The Texas Family Violence Program provides emergency shelter and supportive services to victims and their children in Texas. Texas spends more than a million dollars per year on the Texas Family Violence Program for services to illegal aliens.

5. The Texas's Children's Health Insurance Program offers low-cost health coverage for children from birth through age 18. Texas spends tens of millions of dollars each year on CHIP expenditures for illegal aliens.

6. Further, Texas faces the costs of uncompensated care provided by state public hospital districts to illegal aliens which results in expenditures of hundreds of millions of dollars per year.

7. These harms will only grow over time. As DHS and federal courts have found, incentives matter: reducing the likelihood that an alien will be released into the United States reduces the number of aliens who attempt to enter the United States illegally. *Texas v. Biden*, No. 2:21-cv-67, 2021 WL 3603341, at *6, *18–19 (N.D. Tex. Aug. 13, 2021); *cf. Zadvydas v. Davis*, 533 U.S. 678, 713 (2001) (Kennedy, J., dissenting) ("An alien . . . has less incentive to cooperate or to facilitate expeditious removal when he has been released, even on a supervised basis, than does an alien held at an [ICE] detention facility.").

B. Defendants.

8. Defendant Centers for Disease Control and Prevention is a constituent agency of Defendant U.S. Department of Health and Human Services. CDC conducts specified functions under the Public Health Service Act, including exercising authority delegated by HHS.

9. Defendant Rochelle Walensky is the Director of CDC. Texas sues her in her official capacity.

10. Defendant Xavier Becerra is the Secretary of HHS. Texas sues him in his official capacity.

11. Defendant U.S. Department of Homeland Security oversees the Defendants U.S. Customs and Border Protection and U.S. Immigration and

Customs Enforcement, which are constituent agencies of DHS. DHS and its constituent agencies enforce the INA, and DHS has a duty to enforce orders issued by the CDC under the Public Health Safety Act and its regulations.

12. Defendant Alejandro Mayorkas is the Secretary of DHS. Texas sues him in his official capacity.

13. Defendant Christopher Magnus is the Commissioner of CBP. Texas sues him in his official capacity.

14. Defendant Tae Johnson is the Acting Director of ICE. Texas sues him in his official capacity.

Jurisdiction and Venue

15. The Court has jurisdiction over this dispute because it arises under the Constitution and laws of the United States. *See* 28 U.S.C. §§ 1331, 1346, 1361; 5 U.S.C. §§ 702–703. It has jurisdiction under 5 U.S.C. §§ 705–706 and 28 U.S.C. §§ 1361 and §§ 2201–2202 to render the declaratory and injunctive relief that Texas requests.

16. This district is a proper venue because the State of Texas resides in this district and a substantial part of the events or omissions giving rise to Texas's claims occurred here. 28 U.S.C. § 1391(e).

Facts

A. The INA's detention and enforcement requirements.

1. Detention and enforcement generally.

17. The Homeland Security Act of 2002, Pub. L. 107-296, 116 Stat. 2135, and the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq*., charge DHS with enforcing the United States' immigration laws. Under the immigration laws, "several classes of aliens are 'inadmissible' and therefore 'removable.'" *Dept. of Homeland Sec. v. Thuraissigiam*, 140 S. Ct. 1959, 1964 (2020) (citing

8 U.S.C. §§ 1182, 1229a(e)(2)(A)). Among these classes are aliens who lack a valid entry document when they apply for admission. 8 U.S.C. § 1182(a)(7)(A)(i)(l). Applicants for admission include both aliens who arrive in the United States and aliens who are present in the United States without having been lawfully admitted, who are deemed to have applied for admission. 8 U.S.C. § 1225(a)(1).

18. An inadmissible alien may be removed; the standard process involves an evidentiary hearing before an immigration judge at which the alien may present evidence and argue against removal. *Thuraissigiam*, 140 S.Ct. at 1964. However, this process is slow, and while "removal is being litigated, the alien will either be detained, at considerable expense, or allowed to reside in this country, with the attendant risk that he or she may not later be found." *Id.*

19. To address these problems, Congress created more expedited procedures that apply to aliens who are "present in the United States who [have] not been admitted" and to aliens "who arrive[] in the United States (whether or not at a designated port of arrival. . . .)." 8 U.S.C. § 1225(a)(1). These aliens are subject to expedited removal if they (1) are inadmissible because they lack a valid entry document; (2) have not "been continuously physically present in the United States for the two years preceding their inadmissibility determination; and (3) are among those whom the Secretary of Homeland Security has designated for expedited removal. *See id.* § 1225(b)(1)(A). Once an immigration officer determines that such an alien is inadmissible, the alien must be ordered "removed from the United States without further hearing or review." *Id.* § 1225(b)(1)(A)(i).

20. Whether subject to the standard removal process or the expedited process, aliens who intend to claim asylum or who claim a credible fear of persecution are not deportable while that claim is being investigated. *See* 8

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